80-1381

NO. _____

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IN THE

Supreme Court of the United States

_____ TERM 1981

J. R. CISSNA and EVELYN CISSNA,
his wife,
Petitioner,

v.

ROY E. AMMAN, et al.,
Respondent Class.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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ABCD AT CRAFTSMAN PRESS, SEATTLE

QUESTIONS PRESENTED FOR REVIEW

I. Should not review be granted where in a Class Action:

(a) Notice Was Deceptive. The Notice of Class Action (CP 117) (App. C) indicated Title was being cleared in Purchasers.

> complaint demands judgment . . . that the class own the Recreplex land and building and . . . a money judgment . . . plus attorney's fees and costs,

when in fact the Judgment (App. A, CP 1378) forfeited all claim to ownership, without any prior corrective Notice or consent of the Class. The Judgment deprived the Class of their title stated inter alia as follows (CP 1378, ll. 14-16, App. A):

> All . . . claims of title to such property are hereby dismissed with prejudice and held for naught.

(b) Judgment Granted Against the Plaintiff's Own Corporations. Most of the members of the Class were the principal

investors in the Seller so that the Judgment, instead of clearing title as represented in the Notice, resulted in an unexpected ruinous money Judgment against the plaintiffs' own corporations (App. M, p. 3, l. 18). (See App. E, Judge McNichols' opinion in criminal case as to ownership of Seller.)

(c) $1 Million Attorney Fee for Unwanted "Judgment". The court awarded a 30% fee (of $3.5 Million) (CP 1373, of Judgment, p. 5, l. 19). Other action by the attorney, not consented to by the Class, lost for the parties any benefit of rescission by an unauthorized consent to "withdraw objections to sale of the subject property" (App. D) at a claimed unconscionably low price. This resale complicates the plaintiffs' current efforts to recover title (Owners of N.W. 20 v. Bankers Mortgage, King County No. 80-2-04028-6,

filed August 13, 1980 (by Schweppe, Doolittle, Krug, Tausend and Beezer)).

(d) This Class Action deprived each Owner of his vested contractual right under the inter-co-owners contract EMRA (App. G) to manage and control the real estate?

II. The "Security" question. Distinguishing this case from other "security" precedents is the Seller's having obtained adjudication PRIOR TO ANY SALES BEING MADE. It was assumed it resolved the "security" question. The resulting Order (App. F) ruled that sales of Fractional-Interest-Units of real estate were not "securities", subject to the conditions recited, in that order, which have been precisely incorporated in every related document. That adjudication is attached as App. F. (Order Modifying Temporary Injunction" dated December 28, 1962, consolidated cases of Brett et al. (stockholders of Seller,

F.S.W.) v. Lanctot (Securities Administrator), #34394, and Lonctot v. Federal Shopping Way, #34427. This adjudication was prior to any sales of units of real estate on a fractional interest basis (App. F), and,

(1) The defendant in the initial action was the State Security Administrator Lonctot. The Federal S.E.C. was not a named party but notice was given and Attorney Walter Pitts of S.E.C.'s Seattle office was present throughout the Hearings.

(2) All parties, including the petitioner, relied on the stari decisis applicability of that decision and a total apparent acceptance for over five years by the S.E.C. The S.E.C. v. F.S.W. and Cissna, case, 433 F.2d 148 (9th Cir. 1970) begun in 1967, was without prior indicated challenge to the State case.

(3) The appeals court in this matter relied on that equity case of S.E.C. v.

F.S.W. and Cissna as estopping consideration of the "security" question, relying on Parklane Hosiery Co., Inc. v. Shore, 99 S. Ct. 645 (1979) (App. B). Parklane which is distinguishable, in addition to the reliance on a pre-sale determination, in that,

(a) Petitioner defendant Cissna was a non-salaried elected board chairman and attorney for the Seller, without past or prospective profits in the sales - and accordingly no similar incentive to defend the equity issues in S.E.C. v. F.S.W. and J.R. Cissna, (App. M, p. 3, L. 23).

(b) The issue of "fraud" in the F.S.W. case was predicated on that trial court, Judge Murray's erroneous "legal and factual conclusion" that real estate documents did not transfer title to the purchasers, which was reversed by the Ninth Circuit decision subsequent to S.E.C.

v. F.S.W., 433 F.2d 148 (1970) by the case of Owners v. McQuaid, 513 F.2d 558 (1975) (App. H).

(c) Trial Judge Ray McNichols in the earlier related case involving the same issues and facts, United States v. Cissna, - five years closer to the event (1970, App. E) quoting, "I presently entertain great doubts that the defendants were engaged in the sale of security, as defined in the Securities Act . . ." (See App. E for extended excerpts.)

(d) The following release by the S.E.C. of January 4, 1973, was six years after these sales took place, but demonstrates the vagueness in this area and need for Supreme Court adjudication (Release No. 5347): "The offer of real estate as such, without any collateral arrangements with the seller or others, does not involve the offer of a security". Is not that definition the same as the requirements imposed

and observed by the Seller F.S.W. in the "Brett v. Lonctot et al." (App. F) pre-sale adjudication?

Does not all of the foregoing support the need for Supreme Court determination of the intent of Congress in the non-disclosure type of real estate sale where pre-sale adjudication is sought and relied upon by the parties?

III. Should not review by Writ of Certiorari be granted where a Jury was given a simplistic set of instructions in a real estate sale situation that imposed liability for "non-disclosure of a material fact" without:

(a) identification or making specific what fact the six jurors had in mind when they opinioned what "material facts" had not been disclosed, and where

(b) no identification or specification as to what statement or representation

had been made by the petitioning board chairman that made "necessary" the disclosures under 10(b)5 (CP 685-691) (App. P) and

(c) The trial court denied petitioner's motion for such specification despite the multiple damages foreseeable from a non-disclosed claimed "non-disclosure" (CP 791).

(d) Aggravating this lack of particularity was denial by the trial court of participation by the petitioner as attorney in preparing any appropriate Pretrial Order (CP 791). No issues were framed in respect to any particularity or identification of "material non-disclosures of facts". Further the vagueness on what was the "material fact" made absence of instructions on causation and reliance doubly prejudicial and the special verdict questions tantamount to a directed verdict (CP 620).

LIST OF PARTIES

Plaintiffs are Roy E. Amman and his wife and all members of the class action. Defendants are John R. Cissna and Evelyn B. Cissna, his wife; Federal Shopping Way, Inc., a Washington corporation; Thomas L. McQuaid, Trustee in Bankruptcy of Federal Shopping Way, Inc.; Federal Old Line Insurance Company (Mutual) a Washington corporation; Karl Herrmann, as statutory rehabilitator and receiver of Federal Old Line Insurance Co. (Mutual).

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OPINION BELOW

The opinion below appears as Appendix B of this brief.

STATEMENT OF GROUNDS

A. The Judgment from which appeal was taken was filed February 2, 1978, in the United States District Court, Western

District of Washington, at Seattle, Washington, rendered by the Honorable Judge Donald S. Voorhees in Civil Cause No. 7452 (App. A). A Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit, was filed September 11, 1980, in said court, Cause Nos. 78-1725, 78-1726 (App. B). The argument was heard before a panel consisting of Circuit Judges Eugene A. Wright and Mary M. Schroder and Judge Fred M. Taylor, Senior United States District Court Judge for District of Idaho, sitting by designation.

B. An Order Denying a Petition for Rehearing was filed November 7, 1980, in the United States Court of Appeals for the Ninth Circuit (App. C).

C. The jurisdiction of this Court is Invoked under 28 U.S.C. § 1254.

REGULATIONS, RULES, STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Federal Rules of Civil Procedure, p. 10, Court Rules 23-33:

Rule 23. Class Actions

(a) Prerequisites to a Class Action . . . (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

. . . .

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the finding include:

. . . .

(D) the difficulties likely to be encountered in the management of a class action. . . .

(c) Determination by Order Whether Class Actions to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

> (2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. . . .

United States Code Service, Lawyers Edition, Commerce and Trade, Title 15, USCS, p. 149:

> §78j. Manipulative and deceptive devices
>
> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange--
>
> . . . .
>
> (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Pursuant to this section, the SEC promulgated Rule 10b-5 which provides in pertinent part that:

> It shall be unlawful for any person, directly or indirectly by the use of any means or instrumentality of interstate commerce, or of the mails or by any facility of any national securities exchange,
>
> (a) to employ any device, scheme, or artifice to defraud, [or]
>
> . . . .
>
> Rule 10b-5 (b) to make any untrue statement of a national fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made not misleading.
>
> (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or a deceit upon any person, in connection with the purchase or sale of any security. 17 CFR § 240, 10b-5 (1979).

Constitution of the State of Washington, Article 12, § 5 Revised Code of Washington Annotated, Articles XII to End, p. 8:

> Article 12, Sec. 5. Term "Corporation", Defined - Right to Sue and be Sued. the term "corporations", as used in this article, shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to

> sue, and shall be subject to be sued, in all courts, in like cases as natural persons.

Federal Rules of Civil Procedure, p. 207, Court Rules 1-22:

> Rule 9. Pleading Special Matters
>
> . . . .
>
> (b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

STATEMENT OF THE CASE

This case was tried as a 10(b)5 non-disclosure case. The Notice of Class Action asserted the Complaint sought "ownership" of the real estate purchased in fractional undivided units (App. C, CP 117).

The Seller, Federal Shopping Way, was a community-owned real estate development that had assembled about 40 blocks of what has become the business district of Federal

Way between Seattle and Tacoma (App. E). Many plaintiffs were stockholders in the defendant seller with a total investment of over $5 Million.

In the mid 1960's the Seattle area experienced what is referred to as the "Boeing Depression" so the 1500 investors of the Seller, Federal Shopping Way, Inc., decided to discontinue extended construction of their total "Model Community" and sell periferal real estate (Ex.38, p.23; TR 3251).

When this program was proposed by the Board, the stockholders objected to the sales being to outsiders and required priority rights to owners of the Seller's corporation (TR 3250).

When the request was made to sell in units the record of that stockholders' meeting shows the petitioner and defendant Cissna herein, as attorney and board chairman, required the leaders of the

Seller-Stockholders - Mrs. Pearl Brett, et al., making that request, bring an action and obtain a court adjudication of the "Security Question". The result - App. F.

In these proceedings and the trial before the jury the petitioner Cissna expressly assumed a prior responsibility to other individual defendants for any claimed liability (App. P).

The printed sale brochure, Exhibit 38, p. 1, included the following (Owners Report, Winter 1965-1966):

From page 1:

> Real estate has certain desirable investment elements that ownerships of stocks, mutual funds, etc. do not. But real estate is not a first lien security such as a first mortgage, a listed bond, or an annuity with an Old Line Life insurance company and is therefore in the class of a risk-investment.
>
> Profits from these sources depend on the owner meeting his management responsibilities which is true of any income property. . . .

From page 2:

> This volume gives recognized essential information for evaluating this real estate purchased. No amount of printed matter can replace the opportunity of a first hand visit, or by inquiring personally or through a qualified representative. The Owner's Committee has scheduled meetings from time to time and plans periodic written reports. . . . Only persons who are residents of Washington may acquire an ownership in this property.

A. Action Commenced 1967

This action was filed October 13, 1967, with a Class Action Notice (App. C) asserting the Complaint (App. A) demanded "ownership" be established in the plaintiffs and a money judgment.

B. Trial - 8 Years After Events

The case was not tried until January, 1975, over eight years after the claimed non-disclosure. A few weeks before trial Mr. McKinnon, attorney for the Class, advised he was not going to claim positive misrepresentation but "non-disclosure" (see App. L).

No appropriate issues were framed in the Pretrial Order defining the claimed "material facts" that were not disclosed, and the trial was begun eight years after the event. Most plaintiff witnesses could not remember what was said, let alone what was not stated (App. O).

This resulted in a day after day series of leading questions by McKinnon, attorney for the plaintiffs, with objections thereto overruled by the trial court. The overall result was the impression to the jury that because those selling the real estate were not disparaging the ownerships being sold, that they were "not disclosing material facts". It was not claimed the petitioner ever conducted a sale nor ever received compensation therefor (App. I).

The petitioner, although the elected board chairman and lawyer, had no ownership, no contract with tenure, was non-salaried and had received no commissions, nor did he have prospective profits (App. M, p. 3, l. 23).

The instructions to the jury required no identifying of what it was the petitioning defendant said, nor did that make necessary additional "disclosures". No particularity was required by the court of what was the material fact or facts not disclosed. With no instruction on causation or on reliance, the court, nevertheless, denied defendant's motion to provide the jury "Supplemental Interrogatories".

Quoting from p. 1, ll. 24-5 (CP 753) "move this court for an order directing counsel to submit proposed Supplemental Interrogatories to provide essential specificity. . . ."

Stated on the second page of the Memorandum in Support of the Motion to Direct Supplemental Interrogatories to the Jury, 11. 19 to 24 (CP 756):

> That the victims of this Judgment, including the thousands of Policy-holders of F.O.L. and Stockholders and Bondholders in F.S.W., and their non-salaried selected representatives, should as a modicum of fairness be able to know with specificity, what is the basis of this multi-million dollar potential Judgment against the Companies which they own.

From the Judgment (App. A) the individual defendants appealed to the Ninth Circuit Court of Appeals.

That court ruled (App. B) the petitioning defendant was estopped by the rule of Parklane Hosiery Co. v. Shore, 439 U.S. 322, 99 S. Ct. 645 (1979), and by the decision in the restraining order and receiver pendente lite case of S.E.C. v. Federal Shopping Way, Inc. & J.R. Cissna, 433 F.2d 148 (9th Cir. 1970). The

latter case ruled the sales of these units of real estate were "Securities". Judge Murray found a gross fraud, finding erroneously that the purchasers of this real estate on a fractional undivided interest did not, under the instruments, receive title to real estate, which point was reversed by the Ninth Circuit Court of Appeals in Owners v. McQuaid, 513 F.2d 558 (March, 1975) where it was held the real estate interests, in similar sale by the Seller, Title did vest in the purchasers - pursuant to the exact form of instruments approved by the superior court in the 1962 case of Brett et al. v. Lonctot, prior to any sales on a fractional undivided interest basis were made (App. F).

ARGUMENT

1. The Class Action Notice (App. C) assured those that did not "opt out" that the "ownership" was being demanded, when in

fact the litigation actually abandoned ownership.

The attorney that financed this counter-productive result was then awarded 30% of the purchase price with the litigants deprived of the appreciation of the real estate they bought and paid for prior to 1967. However, here, where many if not most of the Class are principal investors in the Seller-defendant, just about every basic rule of qualifying a class action, has been violated.

2. The Seller Corporation, importuned by the demands of their lawyer-petitioning-defendant, required an adjudication be sought on the "Security Question", prior to sales being made on a "fractional undivided interest basis" (App. F). That suit resulted in a state court ruling by the then Superior Court Judge Charles Wright (later Chief Justice of the State Supreme Court) delineating the provisions that were

included in the documents, in every sale of real estate on a fractional undivided interest basis, to every member of the plaintiff Class.

This issue was avoided by the appeals court decision by reliance on estoppel by reason of the S.E.C. restrainer and receiver pendente lite case in which the sale was ruled a "security" for the administrative jurisdiction there in question. Moreover, grounds on which that ruling was made was later reversed by the Ninth Circuit Court of Appeals (App. H, Owners v. McQuaid, 513 F.2d 558).

It would seem that, particularly in the area of liability based on "registration" and non-disclosure that the Writ here sought should be granted to determine the relevant force of a pre-sale stare decisis decision on the question of "security as compared to a distinguishable estoppel force of an equity decision.

3. The Identity of "Non-disclosed Material". The question of the Degree of Particularity, Indentity, or Specificity in the non-disclosure 10(b)5 is unsettled from the requirement of "particularity" at even the Rule 9 stage in such a case as to the jury instructions. The conflict between the circuits is summarized in 27 A.L.R. 427 and the corresponding 1980 Supplement.

For the foregoing reasons, the petitioner seeks Writ of Certiorari directed to the Court of Appeals for the Ninth Circuit to the end that the Supreme Court will protect and enhance the fairness and public reputation of the judicial proceedings.

Dated at Seattle, Washington this 6th day of February, 1981.

J. R. CISSNA, Pro Se

APPENDIX A

The following excerpt is the final page of the Judgment of February 2, 1978 by the trial court. (CP1378) Signed by Marion Miller, Chief Deputy Clerk of the court, approved as to form February 1, 1978 by United States District Judge Donald S. Voorhees.

20. The real estate described in numbered paragraph 1 of this judgment is in the possession and under the exclusive jurisdiction of the bankruptcy court in Cause No. 61609 entitled "In the Matter of Federal Shopping Way, Inc., a Washington corporation Bankrupt." Plaintiff's rights in or claims to said real estate have been altered by operation of law into the right to make claim against the bankrupt estate. Without determining or derogating from the plaintiff's right or claim to assert in the bankruptcy proceeding an equitable lien upon the bankrupt's interest in such

property, or a right or claim to the proceeds derived from a sale of such property by the bankruptcy court, as against the bankrupt estate all of plaintiff's claims of title to such property are hereby dismissed with prejudice and held for naught.

DATED at Seattle, Washington, this 2 day of February, 1978.

APPENDIX B

This is the decision by the Ninth Circuit Court of Appeals in Cause #78-1725, 78-1726, reported in ___ F.2d___, filed with the Clerk, court of appeals, September 11, 1980. Portions thereof are pertinent to the Petitioner's appeal, in addition to affirming the trial court's alleged errors.

Appeal from the United States
District Court for the
Western District of Washington
Donald S. Voorhees, District Judge, Presiding
Before: WRIGHT and SCHROEDER, Circuit Judges
and TAYLOR*, District Judge

These are appeals by defendants who were found liable for violation of federal and state security laws in connection with the sale of "units" of a recreational complex known as Recre-Plex.

The appellants all challenge the determination by the trial court that the

*Honorable Fred M. Taylor, Senior United States District Judge for the District of Idaho, sitting by designation.

units were "securities" and contend that the jury should have been instructed to decide the question. The evidence, however, could support no conclusion other than that the units were securities. The question was previously litigated in SEC v. Federal Shopping Way, Inc., 433 F.2d 148 (9th Cir. 1970). Appellant Cissna, who was a party to that action, is precluded from relitigating the question. Parklane Hosiery Co., Inc. v. Shore, 439 U.S. 322, 99 S.Ct. 645 (1979). That decision is precedentially controlling as to the arguments by appellants Gronning and Anderson.

Appellants Gronning and Anderson attach the judgments against them on the ground that the judgments are inconsistent with the jury's special verdict finding that Gronning and Anderson believed that their actions and the sales were legal. It is apparent that the jury accepted the

argument by Gronning and Anderson that they were relying on a superior court judgment in a related case as to the lawfulness of their actions. The jury also concluded, however, that Gronning and Anderson were significantly involved in the sales and had a duty to disclose material facts which were not disclosed. Any erroneous belief by the appellants as to the legal consequences of their actions can be characterized only as a mistake of law, not as a mistake concerning the existence of facts upon which liability here is premised. The good faith defense offered by Washington law pertains to mistake of fact and not mistake of law. RCW 21.20.430(2). The plaintiffs did not have the burden of proving that the defendants knew the units were securities. United States v. Brown, 578 F.2d 1280 (9th Cir.), cert. denied, 439 U.S. 928 (1978).

Finally Gronning and Anderson argue that they were entitled to a judgment of dismissal on the claims against them under Washington state security law because under Washington law there can be no securities liability on the basis of non-disclosure, and, further, that there can be no secondary liability unless the purchaser first obtains a judgment against the seller, in this case Federal Shopping Way, Inc. They rely upon Ludwig v. Mutual Real Estate Investors, 18 Wash.App. 33, 567 P.2d 658 (1977), which has been overruled in part by Kittilson v. Ford, 93 Wash.2d 223, 608 P.2d 264 (1980). The Ludwig decision, however, was concerned with the element of scienter as it related to common law fraud and securities violations under the Washington statutes. We do not read that decision as eliminating the possibility of material non-disclosure as an element of fraud. Nor can we hold that Washington law requires

that there be a judgment against the seller in circumstances such as those which exist in this case, in which the selling corporation is bankrupt and the jury's verdict contains findings which would establish liability on the part of Federal Shopping Way, Inc. and, Federal Shopping Way, Inc. had previously been held to have been a participant in fraudulent securities sales. Federal Shopping Way, supra.

Affirmed.

APPENDIX C

The excerpt below is a reproduction of NOTICE OF CLASS ACTION (page 3 thereof) pertinent to the issues warranting the Writ requested. (CP117)

The complaint demands judgment in favor of all members of the class against all defendants declaring that the members of the class own the Recre-Plex land and building free of any claim or interest of defendants and granting to the members of the class a money judgment against all defendants for the amount paid by each member of the class for Recre-Plex units, plus interest, attorney's fees and costs. YOU ARE HEREBY NOTIFIED:

a. The court will exclude you from the class if you file a written request for exclusion with the undersigned clerk of this court not later than June 1, 1969.

b. The judgment in this action, whether favorable or not, will include all members of the class who do not so request exclusion, and

c. Any member who does not request exclusion may, if he desires, enter an appearance through his counsel. However, no one is required to retain his own counsel.

DATED at Seattle, Washington, this 24th day of February 1969.

APPENDIX D

The following is quoted from a document executed by Joseph McKinnon, attorney for the Plaintiff Class, April 11, 1975, entitled "Withdrawal of Objection to Sale." (CP751-2)

The plaintiffs in the above captioned civil action of Amman et al. v. Cissna et al; acting both individually and as representatives of the class of persons who purchased undivided interests in a twenty and a fraction acre tract of land located south of South 312th Street and east of Highway 99 in Federal Way, Washington, known as the Recre-plex real estate; objected to the proposed sale of that property.

The undersigned attorney for the said plaintiffs is advised that the trustee in bankruptcy of Federal Shopping Way, Inc. and the receiver of Federal Old Line Insurance Co. (Mutual), have reached

agreement upon a settlement of all disputes as between them, subject to the approval of the Superior Court for King County and the bankruptcy in this district. Subject to such approvals of the settlement, plaintiffs in the Amman, et al v. Cissna, et al. lawsuit withdraw their said objection to the sale of that real estate.

Dated at Seattle, Washington this 17th day of April, 1975.

APPENDIX E

EXCERPTS FROM TRANSCRIPT - THE HONORABLE RAY McNICHOLS
United States District Judge for the District of Idaho, sitting on special assignment at Seattle Wash.
November 22, 1970
United States v. Cissna, No. 51960

"I have a few preliminary statements to make because obviously there has been public interest in this case and also so the parties may understand some of the Court's thinking."

. . . .

"And so after four weeks of trial I come to the ultimate decision. I have kept meticulous track of the evidence and have given long thought to the issues. . . ."

. . . .

"Much attention has been focused by the defendants on evidence tending to show that the sales people and especially the defendants did fully disclose to prospective purchasers all of the information relative to the offers of sale which were required by law regardless of the legal

nature of the commodity offered. They especially emphasize that the planned sales were to be made to those persons already investors in Federal Shopping Way, the selling company, that such investors were thought to know that the selling company had severe financial woes and that the sales of the units of Recre-Plex were being made to furnish liquidy to Federal Shopping Way."

"Considerable evidence has been offered, firstly to prove that the sale of undivided units of Recre-Plex was in truth, in fact, and law a sale of real estate and secondly, if legally a sale of securities that the defendants had reason to believe and did reasonably believe that the offering constituted a sale of realty."

. . . .

"Viewing the overall evidence, the fact is undisputed that some 2-1/2 million dollars was received by the seller, Federal

Shopping Way, from the sale of Recre-Plex units to some 1300 investors. Likewise, it is clear that these proceeds were used to meet a rather considerable cost of sales and promotion, to pay costs of site planning and improvements, to revamp and rehabilitate the Sea Fair installation, to reduce, in a small measure the mortgage and interest obligations against the Recre-Plex land, and in a large proportion to meet the current and delinquent obligations of Federal Shopping Way."

. . . .

"All investors they believed knew or should have known that the sale of the 20 acres by Federal Shopping Way was to provide funds for the very purposes for which it was used, being the purchase price for the land. They contend that had the entire offering been sold as contemplated adequate funds to build the buildings would

be available and the project completed as contemplated."

"I have previously indicated that I felt that the government's evidence viewed alone and favorably tended to prove that the Recre-Plex undivided units as sold by Federal Shopping Way legally constituted a sale of securities. Having heard all of the evidence, I am not now so fully persuaded. Ignoring for the moment a prior determination in a civil suit in this federal jurisdiction,* I presently entertain grave doubts that the sales here involved constituted a sale of securities. I assume as have all counsel that I am not, for the purposes of the issues of this trial, bound by the holding of any other court on this particular issue."

*The equity relief restrainer and receivership case. S.E.C. v. Federal Shopping Way and Cissna, #7351.

"At the very least, I am not persuaded that the government has proved beyond a reasonable doubt that the defendants were engaged in the sale of securities as defined in the Securities Act of 1933 (codified as 15 U.S.C. 77b(1)."

. . . .

"The ensuing evidence so presented, this time viewed in a light favorable to the defendants, rather clearly depicted each of the separate defendants as a man of good moral character, respected in his community, active in civic and church life, and each being a long time employee of the Federal Old Line Insurance Company. It seems established that each is an industrious, dedicated, and capable individual."

"Further, it became evident that, except for reasonable compensation by way of salary or commissions, no one of the defendants had lined his personal purse at the expense of the investors."

"Voluminous evidentiary material has been produced to show the feasibility, the potential need and community benefit expected to flow from the creation of the contemplated recreational complex. This evidence is most persuasive and bulwarks the defense contention that they not only had good faith in the efficacy of the project but that such faith was well founded."

. . . .

"As indicated, I entertain at least a reasonable doubt that the sales involved fall within the legal status of securities."

"I am inclined to believe that the probabilities are that the defendants acted in good faith and reasonably so."

. . . .

"This being so, my duty is clear and I must find and so find that as to each count each defendant is not guilty."

"A formal judgment of acquittal will be entered in due course."

APPENDIX F

The following is the Final Order following the consolidation of two actions before the late Charles Wright, former Chief Justice of the Washington State Supreme Court, while Judge Wright was superior court judge. The Federal Shopping Way stockholders suit, #34394, Brett v. Lonctot, Administrator of the Securities Division of the State of Washington, seeking authority permitting the sale of Federal Shopping Way real estate on a fractional undivided interest basis without treating such sales as a "Security". Shortly following this action the State Securities Commission brought #34427 Lonctot v. Federal Shopping Way in which they obtained a restrainer pendente lite, December 19, 1962. After hearing, without the S.E.C. being a party but having present Attorney Walter Pitts of the Seattle office, the following final order was

entered entitled "Order Modifying Temporary Injunction" dated December 28, 1962.

THIS MATTER coming on before the undersigned Judge of the above entitled Court upon Motion of the Defendant, Federal Shopping Way, Inc., for an order modifying the temporary injunction granted by the Court on December 19, 1962, to the Plaintiff, Bernard Lonctot, Administrator of the Securities Division, State of Washington, against the Defendant, Federal Shopping Way, Inc., said Plaintiff being present in person and represented by Assistant Attorney General, Charles McClure, said Defendant, Federal Shopping Way, Inc., being represented by John R. Cissna, the Defendants, Richard Gronning and Eugene Hirst, being represented by Frank W. Payne, and the Defendant, Robert J. Boroughs, being represented by M. Rees, and the Plaintiffs, Pearl Brett et al., being represented by

Paul D. Jackson, and the Court having heard arguments of counsel and considered the files and records herein and being fully advised in the premises, now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Temporary Injunction heretofore granted as aforesaid, shall remain in full force and effect insofar as it prohibits the use of the sales documents and agreements used by Federal Shopping Way, Inc. for the sale of the South eight (8) acres of Federal Shopping Way, Inc. as constituted at the time of the inception of the actions herein, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the aforesaid Temporary Injunction shall not apply to sales of the real property of Federal Shopping Way, Inc. provided that the sales and the documents shall reflect and contain the following provisions, revisions, or amendments:

1. There shall be no guarantee of rents by the seller, Federal Shopping Way, Inc., payable by lessees of the property sold;

2. The seller shall not retain any re-purchase or buy-back option or right;

3. The said documents shall recite that all management rights incident to ownership of real property shall be fully vested in the purchasers and owners of said real property and said purchasers and owners shall have the right to adopt their own rules as to voting and all other procedures necessary or desirable in the management of the property purchased and owned by them.

DONE IN OPEN COURT this 28th day of December, 1962.

/s/
Charles Wright, Judge

APPENDIX G

"E M R A"

Excerpts from EARNEST MONEY RECEIPT AGREEMENT (EMRA) which each purchaser accepted at time of purchase. Every paragraph, including number four, was included in every contract of sale of every sale of Fractional Undivided Interest by Federal Shopping Way.

Undivided Interest Agreement

That each and every purchaser and/or owner of said above described segments or fractional portions thereof in said real estate agrees to waive normal right of partition and to accept, in lieu thereof, an agreement by every other owner to confer and abide by a conference of owners and the Purchaser hereby accepts said waiver and agreement. The Purchaser joins in accepting the decision in relation to sale, encumbrance, lease, improvement of this

property, or appointment of a rent collection agency, to the reasonable and fair decision of a majority of owners in dollar investment attending a conference of owners to be held in the Federal Way area on any Saturday afternoon at 3:00 p.m., pursuant to a certified mail notice of the conference mailed to each owner at the address given by him to the lessees or the lessees' successor, postage prepaid. Said notice must be mailed not less than 10 days, nor more than 35 days, before the date of the conference and may be mailed by any owner.

Said conference of owners may adopt such rules relative to the conduct of the conference, the management of the property, or other matters as they may deem just and proper.

Said decisions may be subject to court review by action of any owner providing said action is taken within 60 days following said conference. That after the

expiration of such period, all rights to challenge the reasonableness or fairness of said action, or otherwise question the authority of those acting pursuant to said conference, shall cease, terminate, and be extinguished.

All management rights incident to ownership of said real estate shall be fully vested in the Purchasers and Owners of said real estate and said Purchasers and Owners shall have the right to adopt their own rules as to voting and all other procedures necessary or desirable in the management of the property purchased and owned by them.

APPENDIX H

Excerpts From: Owners of S.W. 8 Real Estate v. McQuaid, 513 F.2d 558 (9th Cir. March 14, 1975)

OPINION

TRASK, Circuit Judge:

. . . .

"The FSW Trustee (Trustee) under the Chapter X proceeding contends that the interests which the Debtor Petitioners acquired from FSW were only intangible contract rights between themselves inter se and FSW, are personal as opposed to real property and that petitioners are therefore not "owners of real property; within the meaning of section 406(6) of the Bankruptcy Act. The Trustee also contends that the deeds are legally insufficient to effect a conveyance of real property; that the restraints on alienability are such as to render them void as against public policy; and that the other 1,051 co-tenants are

indispensable parties under a Chapter XII proceeding."

. . . .

"He then questioned whether the Debtor had the requisite interest in real estate and inquired whether the absence of a right to occupy and enjoy the fractional interest or to deal with it by way of alienation prevented its classification as an interest in realty, concluding that:"

> "In summary, the undivided interests, intrinsically and in terms of public policy, should not be considered real estate. If anything, they are securities.".

"With this mixed finding of fact and of law we cannot agree."

. . . .

"It is contended that the deeds are void because they violate a public policy against restraints on alienation or because the estate conveyed is so ambiguous and undertain that the grant is void. As to the latter we see no such objection upon an

examination of the copies of the conveyances in the record. The grantor and grantee are specified; the description of the land is traced by a metes and bounds description of a surveyed parcel; and the particular interest of the grantee is stated. The instruments were in writing signed by the grantor and acknowledged. Revised Code of Washington, Sec. 64.04.020, 64.04.030. That the grant is of a fraction which must be computed does not render the deed void when the instrument on its face makes clear how the computation may be made. Nor does the waiver of the right to participate constitute a condition rendering the deed void."

. . . .

"The case is remanded for further proceedings in accordance with the views expressed herein."

SNEED, Circuit Judge (concurring):

"I agree that the interests created in "SW 8" are interests in real property and that the deeds creating such interests are not void under the law of Washington."

. . . .

JAMESON, District Judge (concurring):

"I concur in the decision to reverse and remand."

APPENDIX I

Quotes from Joseph C. McKinnon's "Plaintiffs' Brief in Answer to Brief of Appellant Federal Old Line Insurance Co. and to the Brief of Appellants Cissna that is Entitled 'Appellants Substituted Opening Brief.'"

AMMAN et al. v. CISSNA et ux. No. 78-2003

"Here, there may be such a conflict for defendant Gronning. He made large commissions on his own sales of Recre-plex units. No supportable suggestion of any such conflict is made for defendants Cissna, Schulz and Riley. There was neither accusation nor proof that they acted otherwise than as faithful servants of their corporation. Unfortunately, their diligence extended to the point of trying to extradite FOL from its financial difficulties by causing it to participate in a fraudulent sale of unregistered securities in order to liquidate the FSW mortgages to FOL."

APPENDIX J

The Motion to Intervene (CP1492) by members of the Plaintiff Class seeking to intervene and to set aside the Judgment (CP1493-4) is referred to in defendant's "Petition for Rehearing" to the court of appeals, page 11. (Quoting)

"Supplemental to the reproduction of the motion by Francis, Lopez & LePley . . . are the two following pages that the Appellants Move be considered by way of judicial notice as constituting a summary fo 367 documents filed with the District Court rejecting the offer of settlement and requesting the judgment in this case be set aside. It is Moved these documents be considered not for the proof of what they state, but for the fact they have been filed and that they should serve as an offer of proof of the bona fides of the Motion to set aside the judgment and request to intervene.

This Court has been made aware of a "settlement" which without the record on this appeal reflecting these persons action would create a prejudicial impression. Therefore Appellants seek their consideration.

These documents, it is believed support the error of the trial Court in summarily dismissing, without hearing, said Motion to Intervene and request to set aside the judgment."

APPENDIX K

In support of the foregoing (Appendix J) quoted from the defendant's Petition for Rehearing to the Court of Appeals on the denial by the court to allow intervention, is the following copy of the original resolution rejecting a proposed "covenent not to sue" offer and directive to seek title and "set aside" the Amman v. Cissna Judgment". Three hundred and sixty seven individually signed documents, each a copy of the reffered-to resolution, were filed with the district court. In asking the court of appeals to consider these 367 members of the Class, their individual names were listed and the following four paragraphs (including the resolution in paragraph 4) were included in defendant's "Petition for Rehearing" in support of the grounds for rehearing to the court of appeals.

The Resolution duly adopted by a Motion and Second in the N.W.20 Owners

Conference held on November 3rd, 1979, in Federal Way, has now been confirmed and ratified by individually signed documents by 367 of those that participated in the Conference, either in person or by proxy.

As previously reported, this Resolution was on the pre-typed agenda prepared by the O.P.A. Committee of which Hazel Kraemer, Harriet Berg and I were members. The meeting was conducted by our Executive Manager, Mr. Dave Freeman. Mr. Freeman twice read the first Resolution calling for acceptance of the Brink-McKinnon so-called "settlement". The Resolution failed for lack of supporters. He then read the below stated Resolution. Mr. O.W. Niles made the motion to accept the Resolution rejecting the settlement. Mr. Joe Suiter seconded. The motion was carried by unanimous acclimation.

Mr. McKinnon represented to the Court that Ms. Wells, his secretary had "attended

something which was claimed to be a Recreplex Owners Conference . . ." and that only "a tiny percent of the Recreplex purchasers" were present or supported the motion, concluding with the statement "the actual resolutions, set out at page 2 of the agenda, were never moved, seconded or put to a formal vote." Any one of the approximate 70 persons attending could have told the judge this was simply a falsehood characteristic of much of the basis of the judgment obtained by Mr. McKinnon, and statements made to deprive us of our real estate. The individual confirmations by the participants of the following resolution should remove as well as answer questions as to what actually happened, the unconscionable nature of the judgment, and any loss of our property rights to N.W.20. The Resolution adopted is as follows:

> "RESOLVED: That the proposed payment by Federal Old Line of $1,300,000 <u>be rejected</u> and that

despite the fact the Amman et al. v. Cissna et al. judgment determine that the 'class members do not have ownership of the Recreplex real estate' (Hon. Judge Donald Voorhees) and that both Bankruptcy Judge Volinn and District Court Judge McGovern denied requests to set aside sales of our property by Mr. McQuaid, we hereby direct every effort to be made to seek settlement or court orders providing we receive title to our real estate. We also direct our committee and attorneys to seek a new trial and to set aside the Amman v. Cissna judgment and press both the appeal and the case, Schmidt v. Herrmann, and such antitrust relief as they deem proper."

/s/
Alice M. Beyer

APPENDIX L

Law Office of
JOSEPH C. McKINNON
1510 IBM Building
Seattle, Washington 98101
Tel. 682-6822 - Area Code 206

December 31, 1974

The Honorable Donald S. Voorhees
United States District Judge
United States Courthouse
Seattle, Washington 98104

Re: Arman, et al. v. Cissna, et al.
No. 7452

Dear Judge Voorhees:

In order to simplify the necessarily complex instructions to the jury in this case, and in order to shorten the trial, plaintiffs will forego any claim to relief based upon alleged false statements in the sale of the Recre-plex units. Plaintiffs' reliance will be upon sale of unregistered securities and alleged failure to disclose material facts.

Respectfully submitted,
/s/
Joseph C. McKinnon

JCM:db
cc: Mr. Daniel Brink
Mr. J.R. Cissna
Mr. Frank Payne
Mr. Phillip Offenbacker

APPENDIX M

Filed in the
United States District Court
Western District of Washington

Feb 10 1978
Joe R. Romane, Clerk
By Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROY E. AMMAN, et al., Plaintiffs,	)	CIVIL ACTION
	)	NO. 7452
vs.	)	
JOHN R. CISSNA, et al., Defendants.	)	MOTION FOR NEW TRIAL BY PLAINTIFF INTERVENORS

The purchasers of N.W. 20 fractional undivided interests, alleged by Attorney McKinnon to be the "plaintiff class" in the above-entitled cause, together with persons who have "opted out" hereby move the Court for an order setting aside the judgment signed February 1, 1978, and entered February 2, 1978, and granting a new trial in the above-entitled cause upon the following grounds:

1. Class members were not given proper notice of the class action.

2. The notice of class action was inadequate and inaccurate.

3. This is not a proper case for class action.

4. Class members did acquire real estate both under the Circuit interpretation of Washington law in S.W. 8 Owners v. McQuaid, 513 F.2d 558, and under the real estate law of Washington as summarized in Cascade Security Bank v. Butler (1977) 88 Wn.2d 777. Plaintiff intervenors, thus, strenuously object to the attempt to waive or concede in any way their rights in the land by Attorney McKinnon or anyone else.

5. There is no evidence that plaintiffs were not fully informed of all material facts, and the jury verdict did not specify any material facts which were not disclosed.

6. The record, including accompanying affidavits, shows loss caused plaintiffs was not caused by their purchase of the property but by intervening proximate cause, to wit: disparagement of the property, slander of title, abuses of process, violation of antitrust and unfair practice acts, and deceptions and frauds on the Court, proof of which was offered but denied, depriving all parties of a fair trial.

7. The net result of this Judgment is to deprive the plaintiff class of their vested interest in real estate without a hearing, despite the fact they had bought and paid for the same, and to dilute whatever claim they may have "in a Bankruptcy Court hearing" or some remote or distant proceeding, if any. This result is not only unjust but inconclusive and not an "adjudication of all claims and rights and

liabilities of all of the parties" in conformance with Rule 54(b), unless this Judgment deprives plaintiffs of that to which they have a right - the real estate in question.

DATED this 10 day of February, 1978.

/s/
CARL A. TAYLOR LOPEZ
FRANCIS, LOPEZ & LePLEY
ATTORNEYS FOR PLAINTIFFS
INTERVENORS

Filed in the
United States District Court
Western District of Washington

Mar 2 1978
Joe R. Romane, Clerk
By Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROY E. AMMAN, et ux., et al, Plaintiffs, v. JOHN R. CISSNA, et ux., et al, Defendants.	)	CIVIL ACTION NO. 7452 PURCHASERS OF FRACTIONAL UNDIVIDED INTEREST WHO DID NOT "OPT OUT" AFFIDAVIT SUPPORTING RIGHT TO INTERVENE AND FOR NEW TRIAL

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

Each of the undersigned being first sworn say:

1. Each is a purchaser of N.W. 20 and a person eligible for the Class that Mr. McKinnon claims to represent as we understand it.

2. We have read the twenty-four pages by Joseph C. McKinnon Opposing New Trial, his Opposition of Mr. Lopez' Motion to Intervene: This affidavit is made to controvert statements made therein and to support a New trial and in support of attorney Carl Lopez' Intervening for us.

None of the McKinnon documents answer our Grievance.

OUR GRIEVANCE

> We were NOTIFIED McKinnon would secure the Title we purchased. Instead, we have a heinous "Judgment" that, while ruinous to those to whom we feel obligated, is of doubtful collectivility and not the legal result represented by McKinnon's Notice.

3. McKinnon shows he knows our GRIEVANCE, but makes no explanation except to blame it on the Court (Page 5, Line 28 of his Memorandum)

> "Judgments are rendered by Courts, not by the parties or their attorneys."

On page 13, he attaches as an exhibit our February, 1978, Owners Communication, which gives the exact wording of the NOTICE. Apparently he makes no claim we purchasers of Recreplex gave any form of consent to him to "withdraw objections" to "sale of property" at a "give-away" price (or any other price) which we bought and paid for. We did not authorize him to stand by and permit it to be sold at a "give-away" price. The quotes are:

> ". . . The Notice said 'The complaint demands Judgment declaring . . . the members of the Class own the land and building . . . instead if we read the Judgment obtained by Mr. McKinnon correctly, he has done exactly opposite for us . . . The concluding Paragraph 20 closes with these words (that our) "claim to such property are hereby dismissed with prejudice and held for nought."
>
> "Instead of this real estate, which we all know has substantial potential, he has a $3,000,000 Judgment against three former, underpaid and dedicated employees . . . whom our scrutiny and

> research convinces us were totally blameless for any loss to us . . . (we are) not interested <u>if it was possible</u> to join in ruining two companies whose owners were totally blameless and . . . are owed our praise and thanksgiving."

4. Mr. McKinnon calls those of us that believe we have been deceived by his Notice - "uninformed," but unfortunately for Mr. McKinnon, we are also "informed" that he not only abandoned his committment [sic] to secure Title for us, but also assisted Northern Life's law firm in the "give-away" waste of our Real Estate to Mortgage Banker's Corporation, in a secretly negotiated, private sale. We are also "informed" that <u>in the last 30 days</u> Mr. McKinnon has compounded the mischief of the "original give-away" of our real estate by consenting to an extention of option period of what we believe was originally a most wrongful Order to Banker's Mortgage, <u>also without</u> we Owners' consent or authority. (Exhibit B)

5. McKinnon attempts to Obstruct Justice and deprive purchasers of First Amendment Rights, including free exercise of freedom of speech; right of peacable [sic] assembly, and right to petition for redress of grievances by depriving us of any meaningful representation in Court by

McKinnon's Intimidation

(1) Intimidating all attorneys who we undertake to associate by falsely exaggerating the "complexity" which we contend are created by McKinnon. We purchased real estate - we want Title.

Suppressing Right to Petition

(2) Abusive use of Court Order. For example, by quoting Class-Action-Order as if it prevented Communication in the Ordinary Course of the business of our Owners' Committees or our selected Attorneys which the Order expressly does not.

Suppressing Right to Assemble

(3) Similarly, McKinnon brandishes that Class-Action-Order to intimidate us from either our right to

assemble peaceably or our right of free speech or freedon of the Press. (First Amendment Right)

6. McKinnon's entire strategy of diverting attention from the real Issue in this suit, has been a Fraud and Misrepresentations, Affiants contend, - for example:

McKinnon's Concealments

(1) McKinnon CONCEALED the Judgment sought and secured, that was actually against F.S.W. and F.O.L. in which many of us were Owners. At all times we have had a constructive and thoroughly satisfactory relationship with Owners selected management. Such a Judgment is thoroughly unconscionable and unacceptable - again, we WANT OUR TITLE.

McKinnon's Misrepresentations

(2) J.R. Cissna, who never sold any of the real estate, nor was paid $1.00 of compensation for said sale, never owned any of the real estate; held only a qualifying share in the seller (F.S.W.); held no stock in the mortgagee (F.O.L.); had no contract with tenure;

had no proxies; and was non-salaried by the seller, was misrepresented as "dominating."

(3) Although Millions of our Funds and Property have been appropriated to incite smearing of our values and our selected people, McKinnon is now trying to even prevent our protecting our own right to Petition respecting our grievances. (Amendment One Right).

7. Granting purchasers the Title they bought and paid for would give these increased benefits to all concerned. Especially Real Estate Fractional Interest purchasers.

Tender Back Being By-Passed

(a) Purchasers could liquidate their interests with F.S.W. stockholders and F.O.L. policyholders who have faith in the value of the Recreplex real estate, despite McKinnon's smear campaign and characterization of ownership in F.S.W. real estate as a "white elephant" by making tender back of their Titles. (See McKinnon's

argument before Bankruptcy Court on January 31, 1977, Exhibit B).

80% Want Title

(b) On information and belief, Affiants believe 80% of the informed Real Estate Purchasers believe the real estate in Owner hands is worth in excess of the purchase price.

Many Times Superior

(c) Those needing to liquidate would receive many times what the so-called Judgment can produce from the proceeds of the sale,* the Affiants aver on information and belief.* By Bankruptcy Court.

"X76" Revision 78

(d) Purchasers could be fair to informed Owners of F.S.W. and F.O.L. who believe that when Justice is done, both of these Companies will be restored to viability (but that this unconscionable "McKinnon Judgment" is their Chief Obstacle toward restoration). (See Exhibit A, X76 Revised, and attachments captioned "F.O.L." and "F.S.W.".)

8. Decisions on Title should be made in this Proceeding and not fragmented, is

our conclusion from years of informing ourselves. (Questions?)

How Does Bankruptcy Court Validate Claim Jurisdiction

(a) Since the Appeals Court decided the F.S.W. Real Estate Contracts gave Title, HOW is the Bankruptcy Court in control of our real estate, since neither our Real Estate was Owned by F.S.W. and since we paid in full, we did not owe F.S.W. EXCEPT BY McKINNON'S UNAUTHORIZED ACTIONS?

Harmful Even to F.S.W.

(b) Since F.S.W. inflates its debt obligation by 2-1/2 Million Dollars in accepting the N.W. 20 and Judge McNichol, Dist. Judge* had found the Officers charged with this sale, free of any charge of wrongdoing, and the Project warranted "enthusiasm", is not the Bankruptcy Trustee (and the attorneys who control him) exercising the ultimate in obvious perfidity and Breach of Trust to the creditors as a whole in insisting on controlling this Real Estate owned by the Purchasers? (See Exhibit C)

(c) Other basis for the "Bankruptcy Court" not being the proper Forum. (See Paragraph 9)

9. Why we Purchasers object to the "question of Title" being decided by the Bankruptcy Court in respect to the N.W. 20.

(a) Attorneys for the Trustee dominate the Trustee. Their adversary conflict is evident by their disregard of "the best interest of the parties in interest" by kiting F.S.W. claims by keeping jurisdiction of our Real Estate.

(b) The head of the firm representing the Trustee is a Director, a Stockholder, as well as attorney for Northern Life, the competitor of F.O.L. whose people have been leaders in attacking F.O.L.

(c) Ralph Hawkins, Jr. a member of that firm, is secretary of Northern Life and McKinnon's "expert" in attempting to disparage our titles to our real estate.

(d) James Newton, associated with that firm, was the Administrator in charge when the initial without-notice-to-Board Members Restrainer that paralyzed all defense efforts of F.S.W. in September, 1967, that began the steps resulting in the alleged Bankruptcy of F.S.W. and near-ruin of related entities. Affiants contend that firm's actions are consistent with a "cover-up" of

the true values of the properties disparaged and damaged by his action.

(e) Mr. McKinnon's "Plaintiffs" in his Class-Action were principally procured for him by James Newton and associates. To have title and value restored would therefore be an anethema to Newton as well as a million dollar dissappointment [sic] to McKinnon, if such restoration established the validity of Judge McNichol's conclusions that "enthusiasm" for prospects of Recreplex tended to be supported by the evidence.

(f) The Bankruptcy Court Judge Volinn, presiding over F.S.W. liquidation, did, while in private practice, attempt to force F.S.W. into Receivership, and did on that occasion, in writing, swear to the insolvency of F.S.W. The Affiants contend his Decisions have been massively damaging and unsupported by the facts or competent testimony.

10. Affiants offer to show that our Owner Protection Groups have concluded as a result of hundreds of hours of research that

(1) Much of the wrongful blame being placed on this Court and the Bankruptcy Court is attributable to (a) a one-sided allocation of

> attorney's fees and costs, and (b) these proceedings have been controlled by bitter adversaries who pose as fiduciary quasi-judicial of the parties-in-interest.

In Conclusion, a number of (us) who attended the trial before the Honorable Ray McNichol, United States District Judge, in November, 1979, (Cause #51960) are more convinced than ever in the accuracy of Judge McNichols conclusions as summarized:

"Voluminous evidentiary material has been produced to show the feasibility, the potential need and community benefit expected to flow from the creation of the contemplated recreational complex. This evidence is most persuasive and bulwarks the defense contention that they not only had good faith in the efficacy of the project but that such faith was well founded."

/s/ Dewey M. Preusser	8718-43rd Pl. S.W. Seattle, WA 938-1045
/s/ Harriet E. Berg	4906 Evanston Seattle, WA 98103 632-9167
/s/ Russell J. Snyder	4329 Corliss Ave. No., Seattle, WA 98103 633-3857
/s/ Jamie Whitley	630 S. 152nd St. #12 Munro Manor Seattle, WA 98148 244-6989
/s/ Alice M. Beyer	20420-85th Pl. W. Edmonds, WA 98020 778-3585
/s/ Thelma A. Griffith	3625-188th S.W. Alderwood Manor, WA 98036

SUBSCRIBED and SWORN to before me this 2nd day of March, 1978.

/s/ Rose Michelson
NOTARY PUBLIC in and for
the State of Washington,
Presiding at Edmonds

APPENDIX N

Received
Aug 13 1980
King County Superior
Court Clerk's Office

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR
THE COUNTY OF KING

OWNERS OF "N.W. 20" REAL ESTATE, Plaintiffs, v. BANKER'S MORTGAGE COMPANY OF WASHINGTON, a Washington corporation; THOMAS L. McQUAID, as Trustee in Bankruptcy for Federal Shopping Way, Inc., a Washington corporation; et al. Defendants.	NO. 80-2-04028-6 AMENDED COMPLAINT TO QUIET TITLE, FOR EJECTMENT, AND FOR DAMAGES

The plaintiffs allege as follows:

I

DESCRIPTION OF PARTIES AND REAL ESTATE

. . . .

7. Plaintiffs are the owners of and entitled to possession to the following described real property ("the N.W. 20 Property") located in King County, Washington, to wit:

. . . .

8. Plaintiffs are owners of undivided fractional interests of the above-described real estate as tenants in common without right of partition. In lieu of the right of partition all owners agreed as part of their original contracts with the seller to abide by the decisions of the Northwest 20 Owners Conference which consists of all owners in attendance at meetings called pursuant to agreed notice requirements.

. . .

II

PLAINTIFFS' OWNERSHIP INTEREST

9. Between 1964 and 1967, each co-owner/plaintiff entered into an earnest money receipt and agreement and a real estate contract with the seller, Federal Shopping Way, Inc., to purchase fractional interests in the N.W. 20 real estate.

10. Pursuant to these real estate contracts the co-owner/plaintiffs paid to

Federal Shopping Way, Inc. total payments equal to the full value of the real estate and then existing improvements as represented by the seller.

11. Each co-owner/plaintiff received from the seller, prior to September, 1967 a photostatic copy of each purchaser's deed. At the time of receipt of these documents, the original deeds were in the process of being recorded.

12. On September 9, 1967, at a meeting of the N.W. 20 Owners Conference, the president of Federal Shopping Way, Inc. formally delivered to the co-owners/plaintiffs through their selected manager complete control and possession of the N.W. 20 real estate.

III

DEFENDANTS' ACTIONS

13. On October 13, 1967, subsequent to the acts resulting in the acquisition of

ownership described in paragraphs 9-12 above, the United States District Court for the Western District of Washington entered an order directing a court appointed receiver to take into his possession all assets of Federal Shopping Way, Inc. (Securities & Exchange Commission v. Federal Shopping Way, Inc., et al., Cause No. 7351). These assets, including the N.W. 20 real estate, were transferred subsequently to the trustee in bankruptcy for Federal Shopping Way, Inc. (W.D. Wn. Bankruptcy No. 61609).

14. On March 29, 1978, defendant McQuaid obtained from the Bankruptcy Court an Order which, among other things, directed the defendant McQuaid to initiate an action to determine the quality of title held by the bankruptcy estate with respect to the N.W. 20 real estate.

15. On or about October 5, 1979 defendant McQuaid executed a trustee's deed

on behalf of defendants Andrew C. Cratsenberg and Luetta M. Cratsenberg and on behalf of Andrew C. Cratsenberg, as trustee for Andrew C. Cratsenberg, Jr. and Larry S. Cratsenberg (hereinafter the "Cratsenbergs").

. . . .

V

RELIEF REQUESTED

WHEREFORE, plaintiffs request the following relief:

1. The title in the above described real property be quieted in them and that defendants' claims to said property be adjudged inferior to that of the plaintiffs and void;

. . . .

DATED this 12th day of August, 1980.

SCHWEPPE, DOOLITTLE, KRUG,
TAUSEND & BEEZER

By /s/Donald H. Mullins

By /s/James B. Street
Attorneys for Plaintiffs

APPENDIX O

EXCERPTS FROM "FINAL ARGUMENT
BY MR. McKINNON"

TRANSCRIPT OF HEARING

CR 3855 to 3869

Court Reporter's Transcript p. 1 and 2.

"Both Mr. Payne and Mr. Brink made quite a point of the fact that when you or I go out to buy a lot or a house we're not particularly concerned about the solvency of the owner, we're just concerned that he is the owner. But you or I feel differently if a builder comes to us and says, "I own this lot and I'll show you one of my sample homes and if you'll pay me $40,000 I'll sell that lot to you and build a home on it for you." Now, at that point you and I do become concerned whether that builder is on the verge of bankruptcy or whether he's in a position to go ahead and build the home, so that we're going to get a house on that lot when we've paid our $40,000, not just the lot. . . ."

Pages 6 and 7.

"Conspiracy is proved here, as it is in almost every case, by the circumstantial evidence, what did they do, and they didn't just happen on this. They've got books, they've got papers, they've got a sales staff, it had to be worked out and it was worked out, and that's a plan, and that kind of a plan is a conspiracy."

Page 10.

"Now, I'm forced to agree, I can't disagree with the fact that their recollections were not good. My recollection is not good on what happened in 1964, '65, '66 or '67, but some things I can recall. I can recall that if I bought a car, if the saleman told me that there was oatmeal in the transmission, I'd remember that, and that's the kind of question I was asking these people, were you told these things,

these horrible things which would have kept any reasonable person from buying."

Page 13.

"Mr. Brink makes the surprising suggestion that there is very little difference between ownership in common by two or three people and by thousands of people except that there is just a little more trouble. Well, what is a little more trouble? Have you ever tried to get 5,000 people to sign an instrument? How long did 5,000 people remain alive, all 5,000 of them? How many people die without leaving wills and never having probate? How many people go insane"? How many people just move away and you can't find them? I suggest that is more than just a little bit of trouble. It becomes, when you get to numbers like those, absolutely impossible.

"The title is just in complete chaos because you can't get that number of people available to sign mortgages, to sign deeds, to sign anything. They just aren't around. All we had was this untested idea of an Owner's Committee which may or may not have legal validity, and which in any event was not really carried out."

APPENDIX P

The following Special Verdict sets forth the essence of the Verdict by the Jury on which liability was here predicated. (CP 695)

With respect to John R. Cissna:

"d. As an officer or director of Federal Shopping Way, Inc., did he substantially aid Federal Shopping Way in the sale of Recre-plex when he knew, or in the exercise of reasonable care, should have known that Recre-plex units were being sold without disclosure of all material facts to purchasers?

Answer: Yes

"e. As an officer or director of Federal Shopping Way, Inc., did he substantially aid Federal Shopping Way, Inc. in the sale of Recre-plex units when

he knew, or in the exercise of reasonable care, should have known that the Recre-plex units were not registered as securities?

Answer: Yes

"f. Did he have a duty to cause full disclosure of all material facts to be made to Recre-plex purchasers?

Answer: Yes

Office-Supreme Court, U.S.
FILED
MAR 16 1981
ALEXANDER L. STEVAS,
CLERK

NO. 80-1381
IN THE

Supreme Court of the United States

OCTOBER TERM 1980

J. R. CISSNA AND EVELYN CISSNA,
His wife,
Petitioner,

v.

ROY E. AMMAN, et al.,
Respondent Class

IN THE MATTER OF THE PETITION OF J. R. CISSNA FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENTS AMMAN, et al. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

JOSEPH C. MC KINNON
1400 NORTON BUILDING
801 - SECOND AVENUE
SEATTLE, WA 98101
Telephone (206) 624-0900

Attorney for Respondents
Roy E. Amman, et al.

LIST OF PARTIES

The list of parties set out in the petition for a writ of certiorari is not correct. The corporations, the bankruptcy trustee and the state officer shown as defendants have all been dismissed from the action. The correct list of parties is lengthy. It is attached as an appendix to this brief.

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NO. 80 - 1381

IN THE

Supreme Court of the United States

October Term 1981

J. R. CISSNA and EVELYN CISSNA,
his wife,
Petitioner,

v.

ROY E. AMMAN, et al.,
Respondent Class

STATEMENT OF THE CASE

The statement of the case in the petition is an argument of disputed facts rather than the objective statement required by Supreme Court Rule 21.1 (g).

It is respondents' position that the petition should be denied even if its statement of the case were accurate. Respondents therefore will not extend this brief with an accurate summary of the several thousand pages of record, that are amplified by thousands of pages of trial transcript and trial exhibits. However, some major errors in the petit-

ion's statement of the case should be corrected.

All of petitioners' suggested issues were included in the pre trial order. It is to be noted that their criticism of the instructions and interrogatories to the jury do not include any claim that any proper objections to them were overruled. Petitioners instead object to the trial court's refusal to submit further interrogatories to the jury after it had returned a verdict in accord with the instructions it had received. There is no judgement against the seller of the units. That was Federal Shopping Way, Inc. It was dismissed from the action long before the trial, because it is in bankruptcy.

The statement at page 15 of the petition that S.E.C. v. Federal Shopping Way, Inc. and J.R. Cissna, 433 F. 2d 148(9 Cir. 1970) was reversed by

Owners v. McQuaid, 513 F. 2d 558 (9 Cir 1975) is not correct. The two cases are not connected although both involve sale of similar kinds of undivided interest units of real estate ownership. It is to be noted that the latter case recognized that such units are securities. The court referred to them as investment contracts.

ARGUMENT IN OPPOSITION TO GRANTING OF THE WRIT

The Petition Was Filed Too Late

The Court of Appeals denied rehearing on November 7, 1980. The ninety day limit for the petition expired on February 5, 1981. The affidavit of service of the petiition was sworn to by Barry J. Reischling, an official of the company that printed the petition. The affidavit shows that he mailed the original petition and forty copies of it to the Court on February 6, 1981.

There Is No Good Reason For Review

Respondents dispute the accuracy of the statement of the case in the petition. Yet, if the statements were entirely correct and in proper context, they would not justify review by this Court. Petitioners made no real attempt to show any of the kind of reasons for granting of the writ which are specified in this Court's Rule 17. Petitioners instead seek to persuade this Court to review factual issues.

Collateral Estoppel Bars Review

Even if this Court had time to review factual determinations made in the lower Courts upon conflicting evidence, there would be no basis for such review in this case. Petitioners are foreclosed from disputing the result below by the doctrine of collateral estoppel.

In S.E.C. v. Federal Shopping Way, Inc. and J. R. Cissna, supra, (433 F. 2d 148) the Court of Appeals found itself in "total agreement" with the decision of the trial court that J. R. Cissna had "engaged in a course of conduct in the offer and sale of securities in the form of Recre-Plex units which has constituted a gross fraud and deceit upon investors."

That offer and sale of those units is the reason for the judgement against petitioners that they ask this court to review. That may not be done. They are bound by the determination of the S.E.C. injunction suit. See: Parklane Hosiery Company, Inc. v. Shore, 349 U.S. 322, 59 L. Ed. 2d 552, 99 S. Ct. 645 (1979).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted

Joseph C. McKinnon
Attorney for respondents
Roy E. Amman et al.

ROY E. AMMAN, ORAL M. AMMAN, GEORGE P. ANGELEL, ELINOR ANGELEL, WAYNE O. CLARK, CARROLL M. CLARK, JULIUS A. GRATZER, LURA GRATZER,ALBERT M. HOOVER, PEARL M. HOOVER, WINTON M. SLEIPNESS, HELEN L. SLEIPNESS, EVELYN N. SMITH, EARNEST A.HUNGERBUHLER, WILLIAM P. TOPEL, DOROTHY J. TOPEL,EMIL BISIG, ROSE L. BISIG, JOSEPH W. GRUBER, ELIZABETH FERN GRUBER, MERELE E. BUNDROCK, MARIAN F. BUNDROCK, CHARLES J. ESPOSITO, RUBY A. ESPOSITO, ARTHUR F. RUNYAN, CLARA I. RUNYAN, JOHN ANDERSON, KATHLEEN A. ANDERSON, ARNOLD D. DAVIS, ELIZABETH DAVIS, MYRTLE E. PORTH, RAYMOND H. HUNT, HILDA MAY HUNT, JOHN M. HOWARD, MARGARET H. HOWARD, GLADYS L. VARY, DELMA K. RUSSEL, C. OCKERSTROM, HELEN OCKERSTROM, LYLE C. BOYD, LOIS BOYD, TEICO INC., FLOYD KEITER, MARTY D. KEITER, FERN C. MASTERS, BERT SIBON, BERTHA SIBON, JARVIS W. HAUGEN, CAROL F. HAUGEN, ETHEL B. KASSON, VIRGINIA M. JENSEN, EDWARD J. JANIKOWSKI and GENEVIEVE H. JANIKOWSKI are the Plaintiffs in the trial court and they presumably are the persons which the petition for a writ of certiorari seeks to name when it specifies ROY E. AMMAN, et al. Those named plaintiffs represent

a class of over two thousand persons.

Many of the defendants named in the complaint have been dismissed from the action. The defendants who have not been dismissed are listed below. Defendant wives are shown here as "et ux." They are each named in the complaint as "Jane Doe (husband's surname), his wife".

JOHN R. CISSNA et ux.
CHARLES H. ANDERSON et ux.
CLINTON ERICKSON et ux.
FRED W. GEMMER et ux.
RICHARD GRONNING et ux.
VERNON HILL et ux.
JERRY R. MAJORS et ux.
EVERETT MARTIN et ux.
LOUIS MAZZA et ux.
WAYNE G. MOSBY et ux.
RAY M O'DAY et ux.
ROBERT M. PAVOLKA et ux.
RAYMOND PHILLIPS et ux.
M. A. WUTZ et ux.
FRANCIS H. CHAPIN et ux.

MAR 30
ALEXANDER L.
CLERK

NO. 80 - 1381

SUPREME COURT OF THE UNITED STATES

_____TERM 1981

J. R. CISSNA AND EVELYN CISSNA,
His wife,
Petitioner,

v.

ROY E. AMMAN, et al.,
Respondent Class.

IN THE MATTER OF THE PETITION OF J. R. CISSNA FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S REPLY TO "BRIEF OF RESPONDENTS AMMAN, ET AL."

J. R. CISSNA,
Attorney Pro Se

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1932-First Ave. Suite #415
Seattle, Washington 98101
(206) 623-6262

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NO. 80 - 1381

IN THE

SUPREME COURT OF THE UNITED STATES

TERM 1981

J. R. CISSNA and EVELYN CISSNA, his wife,

Petitioner,

v.

ROY E. AMMAN, et al.,

Respondent Class.

PETITIONER'S REPLY TO "BRIEF OF RESPONDENTS AMMAN, ET AL."

The Respondent's Brief, opposing the Petition for Writ of Certiorari, Argues:

(1) *"The statement of the case is an argument of disputed facts."* This is simply not the case and no specifics are given to support the assertion.

(2) *Petitioner's objection to being excluded from pretrial participation was*

cured by" ....petitioner's suggested issues were included in the pre trial order." This substitute for the usual accepted participation by all parties in preparation of a pre-trial Order was not only manifestly unfair, but was a direct contributing cause of the improper Instructions to the Jury, Petitioner contends.

The Instructions failed to (a) identify what was stated by the Petitioner Cissna that made necessary the disclosure of a material fact or facts not disclosed, and (b) the identity of the alleged material non-disclosure.

(3) *The petitioner objects to the trial court's refusal to submit further interrogatories to the jury after it had returned a verdict in accordance with instructions it had received.* This post-verdict motion, before the Jury was dismissed in the Trial Court, was simply a further opportunity afforded the Trial Court to cure the deficient jury instructions by identifying what duty had been violated that supported a $3 Million Judgment for non-disclosure. Otherwise, we now have the anomaly of a "non-disclosed non-disclosure."

(4) *"There is no judgment against the seller, Federal Shopping Way....It is in bankruptcy."* True. These purchasers (the Class) did not receive the

"judgment in favor of all members against" the defendant seller "declaring that the members of the class own the land and building" nor otherwise. (Quotes are from the Notice [Appendix C, p.A-8 Petition]) Instead the result (without the consent of the Class nor any prior Notice) is a Bankruptcy Judge's Order allowing a Creditor's claim against the Bankrupt Seller. In a narrow sense, not a "Judgment", but a needless dilution of the net asset of the Seller corporations in which so many members of the Class were also stockholders and creditors. Their participation in the assets were thereby needlessly diluted. Naturally, many consider this action

the cause of the bankruptcy of their company. A result diametrically opposite to the object of the Securities & Exchange Law, as the decision now stands.

(5) *"The statement at page 15 of the petition that S.E.C. vs. F.S.W. and J. R. Cissna, 433 F.2d 148 (9 Cir. 1970) was reversed by Owners vs. McQuaid, 513 F.2d 558 (9 Cir 1975) is not correct."* The statement on page 15 of the Petition is accurate. The statement in S.E.C. vs. F.S.W. and J. R. Cissna (1970) that there had been "gross fraud" was predicated on District Court Judge Murray's and the Trial Court's legal conclusion that the instruments did not transfer real estate title to the purchaser, which if true would have been a "gross fraud." The 9CCA 1975 case of Owners v. McQuaid, 513 F.2d 558 Reversed the same trial Judge, District Judge

Murray, finding sales instruments by the same Seller, Federal Shopping Way, Inc., identical in form, did transfer real estate title, stating:

> " 'In summary, the undivided interests, intrinsically and in terms of public policy, should not be considered real estate. If anything, they are securities.' "

"With this mixed finding of fact and of law we cannot agree."

The grounds of the "gross fraud" in S.E.C. v. F.S.W. and J. R. Cissna, 433 F.2d 148 (1970) are stated in the above subquotes. Thus, the accuracy of the page 15 statement "Moreover, grounds on which that ruling (S.E.C. vs. F.S.W. et al.-1970) was made was later reversed by the Ninth Circuit Court of

Appeals [Appendix H, Owners v. McQuaid, 513 F.2d 558 (1975)]cannot be disputed.

(6) *"Collateral estoppel bars review. Petitioners are foreclosed from disputing the result below by the doctrine of collateral estoppel."* The respondent and the Court of Appeals rely on the principle of offensive collateral estoppel, without concern for the clear limitations as set forth in Parklane Hosiery Co. Inc. v. Shore, 99 S.Ct. 645, 349 U.S. 322, 59 L.Ed. 2nd 552.

The limitations by the foregoing decision clearly exclude the S.E.C. v. F.S.W. and J. R. Cissna case 433 F.2d 148 (9th Cir 1970) from application of the principle of offensive collateral estoppel as a bar to the petitioner in this case.

Those three limitations, quoting from the Parklane case, supra, include:

> First: "If a defendant in the first action is sued for small or nominal damages he may have little incentive to defend vigorously ...."

The defendant Cissna in the S.E.C. case was not sued for any amount of money damages and had no interest nor did the restrainer in that action deprive Cissna of any existing interest or prospective profit from the sales enjoined. In fact, the seller, Federal Shopping Way, had disposed of all of its equity in the real estate prior to the injunction.

> Second: " Allowing offensive estoppel may also be unfair to the defendants if the judgment relied upon [S.E.C. v. F.S.W. and J. R. Cissna] as a basis for the estoppel is itself inconsistent with one or more previous judgments in favor of the defendants."

The S.E.C. case (1970) was directly inconsistent with the previous decision by the late Honorable Judge Charles Wright (while Superior Court Judge - later Chief Justice of the Washington State Supreme Court) in Brett v. Lonctot (see Appendix F, defining sales of real estate by Federal Shopping Way as not being a security). Supporting the above quoted limitation as it applies to the 1970 S.E.C. case is both the reference to Owners v. McQuaid, supra, and also the judgment in the Federal District Court case of (1970) United States v. Cissna, No. 51960. Athough the decision was based on fact there was no fraud nor duty violation by J. R. Cissna, Judge McNichol

added that he entertained "at least a reasonable doubt that the sales involved fall within the legal status of securities." (See quotes from that decision, Appendix E of the Petition, pages A-12 through A-17.)

> Third: "Still another situation where it might be unfair to apply offensive estoppel is where the second action affords the defendant procedural opportunities unavailable in the first action, that could readily cause a difference in results."

In the regulatory action, seeking a restrainer and receiver pendente lite, there could be none of the procedural opportunities available in that action that should have been available in this 10b5 suit for millions.

The opinion of the Court in the Parklane case, despite the application of estoppel in that case skirting the constitutional question on which Mr. Justice Renquist based his dissent, concluded that in Parklane the defendant had had "a full and fair opportunity to litigate: and that was the "defendant's most significant safeguard", but that

> "the general rule should be that in cases where ...the application of offensive estoppel would be unfair to a defendant, a trial judge should not allow the use of offensive collateral estoppel."

A fortiori an appellate Court of Appeals in this case should not allow the use of the 1970 S.E.C. injunction case to bar a defense in this 10b5 case.

(7) *"The ninety day limit for the petition expired on February 5, 1981. The affidavit of service of the petition,..shows that he mailed...it to the Court on February 6, 1981."* Prior to the Clerk docketing the case as of February 5,1981, No. 80-1381, the party signing the original affidavit filed a "Corrected affidavit of service..." (App. A, this Reply) which stated

> "that on February 5, 1981 the affiant deposited an envelope...I am informed apparently the after hour mailing date resulted from the date on the postal meter being set forward before the expiration of the day."

Being Pro Se, this Petitioner asked a member of the Bar of this Court to review the filing and provide the Clerk and Court with

Confirmation of its timeliness. That affidavit is attached as Appendix B.

If, for any reason, the Court deems the filing may not be timely, the Petitioner requests an opportunity to make an appropriate Motion pursuant to the discretion of the Court as exercised in Schact vs. United States, 308 U.S. 68. It will be noticed the respondent on page 3 of his Reply states. *"The Court of Appeals denied rehearing on November 7, 1980"* in San Francisco and the affidavit Appendix B shows the receipt by the Petitioner in Seattle of that Order November 10, 1980, and that FRCP Rule 6(e) states:

"Whenever a party...is required to do or take some proceedings within a prescribed period after the service of a notice or other paper upon him, and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period."

The date relied upon by the respondent is February 6, 1981, in claiming it was *"filed too late"*. The correcting affidavit assumed "the postal meter was set forward before the expiration of February 5, 1981." If the date of receipt or FRCP Rule 6(e) is adopted, the 90th day would be Sunday, February 8,1981, viz, Monday, February 9, 1981 or 4 days or 3 days after the actual day filed.

The case was timely docketed by the Clerk. The record is clear, and no detriment claimed by the respondent.

CONCLUSION

The Respondent's brief amplifies and clarifies the special and important reasons for granting this Writ of Certiorari in respect to the need for resolving by this Court the important questions of Class Action; the efficacy of reliance on the stari decisis as opposed to depriving a party of defense by an overbroad application of collateral estoppel; recognizing the conflict between Courts of Appeals in respect to required specificity, particularity and identity of alleged non-disclosures of a material fact from the FRCP Rule 9 phase to the Jury instructions stage; the departure from the true intent of the

Securities & Exchange Law to enable the judicial machinery to protect and increase investment values rather than increasing causes of hazard and loss; and employing this Court's supervisory power to enforce the accepted and usual course of judicial proceedings such as allowing the defendant (Petitioner) herein participation in preparation of pre-trial Order.

For the foregoing additional reasons Petitioner respectfully seeks Writ of Certiorari directed to the 9th Circuit Court of Appeals.

Dated this 20th day of March, 1981.

J. R. CISSNA
Attorney Pro Se

APPENDIX A(1)*

ABCD A Business Communications Division

IN THE SUPREME COURT OF THE UNITED STATES

J.R.CISSNA and EVELYN CISSNA, Petitioner, v. ROY E. AMMAN, et al., Respondent Class	___Term, 1981 NO._____ CORRECTED AFFIDAVIT OF SERVICE BY MAIL OF PETITION FOR WRIT OF CERTIORARI

STATE OF WASHINGTON)
) ss:
COUNTY OF KING)

BARRY J. REISCHLING, being first duly sworn on oath, deposes and says: That he is a citizen of the United States of America and of the State of Washington, residing in King County of said state; that he is of legal age, not a party to the above-entitled action and competent to be a witness therein; that on February 5* 1981, affiant deposited an envelope in the United States mail properly stamped and addressed to the following:

*Original document filed with Clerk of the Court

APPENDIX A(2)

Mr. Joseph C. McKinnon
Jones, Grey & Bayley
14th Floor, Norton Bldg.
Seattle, Wa. 98104

Mr. Phillip Offenbacker
Short, Cressman & Cable
3000 Sea-First Nat'l
Bank Building
Seattle, Wa. 98154

Mr. Frank W. Payne
Payne & Verzani
30640 Pacific Hwy. So.
Federal Way, Wa. 98002

said envelope containing a copy of this affidavit and three copies of Petition for Writ of Certiorari. *I am informed"apparently the after hour mailing date resulted from the date on the postal meter being set forward before the actual expiration of the day".

/s/ Barry J. Reischling
Barry J. Reischling

APPENDIX A(3)

SUBSCRIBED AND SWORN TO before me on

February 12, 1981.

/s/ J. R. Cissna

J. R. Cissna
NOTARY PUBLIC in and for
the State of Washington,
residing at Seattle

Orig: U.S. Supreme Court
+ 40 copies

c.c. J. R. Cissna
aBCD

APPENDIX B(1) *

IN THE

SUPREME COURT OF THE UNITED STATES

J. R. CISSNA and EVELYN CISSNA, his wife,	)	NO. 80-1381
Petitioners,	)	
vs.	)	
ROY E. AMMAN, et al.,	)	
Respondent Class	)	

AFFIDAVIT CERTIFYING AS TO MAILING OF PETITION FOR WRIT OF CERTIORARI

STATE OF WASHINGTON)
) ss:
COUNTY OF K I N G)

The undersigned, being a member of the Bar of the United States Supreme Court, makes this affidavit on information, and belief that the Petition For Certiorari in the above case was filed by deposit in the United States mail postage prepaid of $17.08 on February 5, 1981 and said filing was accordingly within 90 days of the

*Original document filed with Clerk of the Court

entering of the attached Final Order denying rehearing filed November 7, 1980 in San Francisco, and received by mail, by J. R. Cissna on November 10, 1980.

The attached copy is further certified by me as a true photostatic copy of the copy of said Order as reviewed by me and received and provided me by J. R. Cissna, a member of the Washington State Bar, the Federal District Court Bar and the Ninth Circuit Court of Appeals.

/s/ Richard B. McNees

Subscribed and sworn to before me this 5th day of March, 1981.

/s/ J.H. Fisher

NOTARY PUBLIC in and for the State of Washington, residing at Seattle